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Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, submitted pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1. In it, the Special Rapporteur examines the current human rights situation in the Occupied Palestinian Territory, with a particular emphasis on the right to health.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

I. Introduction

1. The present report is submitted by the current Special Rapporteur to the Human Rights Council pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1.

2. The Special Rapporteur would like to draw attention once again to the fact that he has not been granted access to the Occupied Palestinian Territory, nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted. The Special Rapporteur re-emphasizes that an open dialogue with all parties is an essential element of his work in support of the protection and promotion of human rights. He further notes that access to the Occupied Palestinian Territory is a key element in the development of a comprehensive understanding of the human rights situation on the ground. While he does wish to recognize the exemplary work of experienced and competent civil society organizations, which provide an excellent basis for his work, he laments the lack of opportunity to meet with many of those groups due both to his exclusion from the Territory and to the barriers many individuals face should they seek exit permits from the Israeli authorities, particularly from Gaza.

3. The present report is based primarily on written submissions and consultations with civil society representatives, victims, witnesses and United Nations representatives. The Special Rapporteur undertook his second annual mission to the region, to Amman, from 15 to 19 May 2017. In addition, throughout January 2018 he held several consultations with civil society by videoconference and received a number of written submissions, in particular related to the right to health.

4. In the present report, the Special Rapporteur focuses on the human rights and humanitarian law violations committed by Israel, in accordance with his mandate.[1] As the occupying Power, Israel has the legal obligation to ensure respect for and protection of the rights of Palestinians within its control.[2] The mandate of the Special Rapporteur therefore focuses on the responsibilities of the occupying Power, although he notes that human rights violations by any State party or non-State actor are deplorable and only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur also wishes to extend his thanks once again to all those who travelled to Amman in May 2017 to meet with him and to those who were unable to travel but made written or oral submissions. The Special Rapporteur acknowledges the essential work being done and the efforts undertaken by civil society organizations and human rights defenders to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses. The Special Rapporteur will continue to support that work as much as possible.

6. The present report is set out in two parts. First, it provides an overview of the current human rights situation in the Occupied Palestinian Territory. This discussion, while not exhaustive, aims to highlight those human rights concerns the Special Rapporteur has identified as particularly pressing, with a focus on the human rights situation of children in the West Bank and in Gaza. In the second part of the report, the Special Rapporteur examines the right to health, with a particular focus on the increasingly dire humanitarian crisis in Gaza. It must be emphasized that the conditions in Gaza have been described as

[1] As specified in the mandate of the Special Rapporteur set out in resolution 1993/2.

[2] See Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 47.

unliveable for many years now, and the people of Gaza have no choice but to persevere. The impact of the blockade on their right to health is explored in detail in the present report.

II. Current human rights situation

7. Since the Special Rapporteur's previous report to the Human Rights Council, the human rights situation in the Occupied Palestinian Territory has continued to deteriorate. Palestinians in Gaza and the West Bank, including East Jerusalem, have faced demolitions of homes and schools, arrest and arbitrary detention and restrictions on freedom of movement. As the Rapporteur has noted in previous reports, the occupation by Israel affects all aspects of life for Palestinians, from access to medical care to building a home to seeking to travel abroad.

8. On 6 December 2017, the President of the United States of America, Donald Trump, announced that the United States recognized Jerusalem as the capital of Israel. The announcement specified that the United States was not taking any position on final status issues, including the specific boundaries of Israeli sovereignty in Jerusalem or the resolution of contested borders. The announcement resulted in significant political backlash from the international community and the Palestinian authorities, and widespread protests broke out across the West Bank and Gaza. The feeling of hopelessness among Palestinians resulting from the announcement cannot be overstated, and it is against the background of 50 years of occupation that the announcement by the United States, and current concerns with respect to human rights, must be viewed.

A. The West Bank, including East Jerusalem

9. Over the course of 2017, the settlement enterprise steadily advanced after the start of the year saw a sharp rise in the number of new settlement units announced by the Government of Israel.[3] In June, the Prime Minister of Israel, Benjamin Netanyahu, announced that ground had been broken in the first new settlement established in 25 years, Amihai. The settlement was established for the families who were evacuated from the Amona outpost after the Israeli High Court of Justice declared the outpost to be illegal. The settlement is expected to include 102 housing units, although only 41 families were evicted from the Amona outpost (see A/72/564, para. 6). According to a report published by the European External Action Service of the European Union at the end of 2017, the first half of the year saw the development of settlement plans that would potentially enable more than 30,000 new settlers to move to the West Bank, including East Jerusalem.[4]

10. Settlements have been found to be at the centre of many recurrent human rights violations in the West Bank. Palestinians living in close proximity to settlements must regularly pass through checkpoints on their way to school or work, towns or villages are subject to closure by the Israeli military and night raids and arrests are frequent. According to data collected by Palestinian civil society organizations, night raids of Palestinian homes by the Israeli military predominately occur within 2 kilometres of settlements.[5] Night raids often result in the arrest and detention of Palestinians, including, in many cases, Palestinian

[3] See A/72/556, paras. 11–13, and A/72/564.

[4] European External Action Service, "Six-month report on Israeli settlements in the occupied West Bank, including East Jerusalem (January–June 2017)", 15 December 2016. Available at https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/37466/six-month-report-israeli-settlements-occupied-west-bank-including-east-jerusalem-january-june_en.

[5] Women's Centre for Legal Aid and Counselling, "Israel military night-raids on Palestinian residences in the West Bank and East Jerusalem", June 2016. Available at: www.wclac.org/english/userfiles/NIGHT%20RAIDS.pdf.

children. Data collected indicate that 98 per cent of Palestinian children arrested live within 1.02 kilometres of a settlement.[6]

Children

11. At the end of November 2017, figures released by the Israel Prison Service indicated that 313 Palestinian minors were being held in Israeli prisons, 2 of whom were being held on administrative detention orders, and 181 of whom were being held for ongoing legal proceedings.[7] It should also be noted that many Palestinian children are arrested and released during the course of a year. In 2017, the United Nations Children's Fund (UNICEF) reported that 729 children had been detained or arrested in East Jerusalem alone.[8] According to the Convention on the Rights of the Child, the deprivation of the liberty of a child should be used only as a last resort and for the shortest appropriate period of time.[9]

12. A 2013 UNICEF report noted that ill-treatment of Palestinian children in the Israeli military detention system appeared to be widespread, systematic and institutionalized, based on the volume of data the agency had collected in the 10 years preceding the publication of its report.[10] Concerns highlighted in that report, and which continue to be raised today by civil society based on numerous allegations, include reports of physical and verbal abuse, the regular use of hand ties and painful restraints, coerced confessions, a lack of access to lawyers and family members and the consistent use of night arrests.[11] The practices described by organizations working to protect and assist children in detention not only fail to take into account the particularly vulnerable position of children, but also deny children their fundamental rights. The negative impact of those practices on the next generation of Palestinians is one of the greatest tragedies of the ongoing occupation.

13. This issue was brought to light once again at the start of 2018 by the arrest and detention of 17-year-old Ahed Tamimi. She was arrested after video footage showing her physically confronting two Israeli soldiers near her family's home in the West Bank was circulated in the media. The Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territory has called for Ms. Tamimi's best interests to be the primary consideration in her ongoing detention and trial. The Special Rapporteur, together with the Working Group on Arbitrary Detention, have raised concerns about her pretrial detention and detention on remand.[12] Ms. Tamimi's case is emblematic of the issues arising from the practice of arrest and detention of children in the Occupied Palestinian Territory, and more broadly of the fact that children are bearing the brunt of the impact of

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[6] Military Court Watch, "Briefing note: February 2018". Available at www.militarycourtwatch.org/files/server/BRIEFING%20PAPER%20-%20FEB%202018.pdf.

[7] B'Tselem, Statistics on Palestinian minors in the custody of the Israeli security forces. Available at www.btselem.org/statistics/minors_in_custody.

[8] United Nations Children's Fund (UNICEF), "State of Palestine: humanitarian situation report", January–December 2017. Available at: www.unicef.org/appeals/files/UNICEF_State_of_Palestine_Humanitarian_Situation_Report__Year_End_2017.pdf.

[9] See Committee on the Rights of the Child, general comment No. 10 (2007) on children's rights in juvenile justice, para. 79.

[10] See A/71/554, paras. 25–32; UNICEF, "Children in Israeli military detention: observations and recommendations", February 2013, p. 13, available at www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf.

[11] Military Court Watch, "Briefing note: February 2018"; UNICEF, "Children in Israeli military detention", p. 14; Human Rights Watch, *World Report 2018: Events of 2017* (New York, 2017), available at www.hrw.org/world-report/2018/country-chapters/israel/palestine; Defense for Children International-Palestine, "Year-in-review: worst abuses against Palestinian children in 2017", 18 January 2018, available at: www.dci-palestine.org/year_in_review_worst_abuses_against_palestinian_children_in_2017.

[12] Office of the United Nations High Commissioner for Human Rights (OHCHR), "United Nations rights experts alarmed by detention of Palestinian girl for slapping Israeli soldier", 13 February 2018. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22654&LangID=E.

the occupation and associated human rights violations. The importance of ensuring that the rights of children are respected and protected cannot be overstated.

14. Daily life in the West Bank is continually affected by the often heavy presence of Israeli security forces, for example at checkpoints and in relation to closures of roads and neighbourhoods — measures which in many cases may amount to collective punishment. Children continue to be affected by the restrictions on movement in the West Bank, which is particularly concerning when they are seeking to access hospitals and schools in East Jerusalem. To address the issue, UNICEF supports the provision of a protective presence to teachers and students going to and from school in the West Bank. In 2017, such support was provided to 8,123 children and 414 teachers.[13]

15. In addition to the difficulty children experience in accessing schools, the demolition of schools is also a concern, particularly in communities at risk of forcible transfer in the Jerusalem periphery. In 2017, the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) reported on the situation of Khan al-Ahmar, a Bedouin community at risk of forcible transfer in the West Bank. The Israeli Civil Administration issued demolition orders for 44 structures, including the school, in Khan al-Ahmar in early 2017. The community received a temporary injunction in March 2017, but representatives of the nearby settlement of Kefar Adummim submitted a petition seeking to compel the Israeli Civil Administration to demolish the school, as it was built without required permits, which are nearly impossible for Palestinians to obtain (see A/71/554, para. 35). According to information submitted by UNRWA, the State response to the petition confirms that the community is expected to relocate to a site identified by the Government of Israel and that the State intends to demolish the school and structures in early 2018, proposing to build an alternative school at the relocation site. As of the start of 2018, the High Court of Justice had upheld those orders, although the demolitions had not yet been carried out.

16. In the West Bank, UNRWA has raised concerns regarding Israeli forces' repeated use of large amounts of tear gas, particularly in crowded areas and confined spaces, including refugee camps and homes within camps. The practice has a particularly detrimental effect on vulnerable populations such as children and the elderly, as the tear gas does not dissipate in densely populated or confined areas. UNRWA reported at least 48 incidents in 2016 in which tear-gas canisters, stun grenades, plastic-coated metal bullets or live ammunition used by Israeli forces landed in UNRWA compounds or damaged UNRWA installations. Those incidents resulted in one injury as well as lost school and work days for students and staff suffering from tear-gas inhalation. It should be noted that tear gas may only be used where strictly necessary in a law enforcement context, must be carefully controlled to minimize the risk to children and uninvolved persons[14] and must be used in proportion to the seriousness of the offence and the legitimate objective to be achieved.[15]

Legal developments

17. The continued advancement of the settlement enterprise described above has been accompanied by a worrying number of legislative and legal policy developments, which, if continued, would have the effect of making the expropriation of private Palestinian land merely an administrative matter, occurring, in a sense, out of the public eye.

18. Legislative measures aimed at extending Israeli jurisdiction to the West Bank have proliferated recently, with a notable example being the recent passage of a bill which gives authority over institutions of higher education in the West Bank to an Israeli governmental body. The Knesset member who initiated the legislation reportedly said when discussing the new legislation: "Alongside the academic importance of the law, there is a clear element

[13] UNICEF, "State of Palestine: humanitarian situation report".

[14] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, gen. provs. 3, 5 (c) and 14.

[15] Ibid., gen. prov. 5 (a).

here of applying sovereignty and I'm proud of both of these things."[16] The legislation comes after the passage last year of the Law for the Regularization of Settlement in Judea and Samaria, 5777-2017, referred to as the "regularization" law, which allowed for the retroactive legalization, under domestic law, of outposts built illegally on private Palestinian land. It should be noted that settlements of all kinds are considered illegal under international law (see A/72/564, para. 14). In addition to allowing for the confiscation of private Palestinian land, the passage of the law was the first time Israel extended its jurisdiction to matters involving private Palestinian land in the Occupied Palestinian Territory.

19. In addition to legislative moves seeking to extend Israeli control over the occupied West Bank, there are further policy shifts that have been described as attempts to "normalize" Israeli settlements in the West Bank. For example, in December 2017 the Attorney General of Israel issued a directive mandating that all Government-sponsored bills include a clause specifying whether or not the bill would also apply to the Occupied Palestinian Territory.[17]

20. The new laws and policy shifts, accompanied by the continued proposal of various legislative measures seeking to annex specific settlements and municipalities in the West Bank, represent what has been called a paradigm shift in the way the Israeli Government conducts the occupation. The legal framework of occupation, and the protections it provides, are being steadily eroded by the legislation, which seeks to regulate the West Bank as if it is a part of Israel.

B. Gaza

21. Despite widespread recognition that the situation in Gaza is unsustainable, unliveable and in many ways horrific, little progress has been made in improving the humanitarian situation of the people there. Many in Israel recognize the building crisis, and the Palestinian Authority is also well aware of the deteriorating conditions in which the residents of Gaza live. After 10 years of blockade, the population of Gaza is in a particularly vulnerable position, with as much as 70 per cent of the population dependent upon some form of humanitarian assistance. The electricity crisis, which intensified significantly in May 2017, although it has improved slightly in recent months, continues to have a negative impact on the situation of the residents of Gaza as of January 2018. The reconciliation process initiated in November 2017 between the authorities in Gaza and Fatah in the West Bank seems to have all but stopped, and punitive measures imposed on the authorities in Gaza by the Palestinian Authority continue to negatively impact the human rights and humanitarian situations of Gaza's residents. That, combined with 10 years of the Israeli blockade and continued restrictions on the movement of people and goods, have contributed to growing feelings of hopelessness and desperation for the people of Gaza.

Children

22. It must be noted that the impact of the occupation on children is not limited to the situation in the West Bank. In Gaza, restrictions on freedom of movement and the difficulty of importing goods critical for service delivery undermine economic prospects and the availability of essential services. The restrictions imposed by Israel continue to impede the realization of a broad range of human rights, including economic, social and cultural rights such as the rights to health and education and ultimately to an adequate standard of living. Children growing up in this environment face innumerable challenges.

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[16] Yarden Zur, "Israel's creeping annexation: Knesset votes to extend Israeli law to academic institutions in the West Bank", *Haaretz*, 12 February 2018. Available at www.haaretz.com/israel-news/israel-votes-to-expand-israeli-law-to-academic-institutions-in-w-bank-1.5810994.

[17] Revital Hovel, "New laws should also consider settlers in West Bank, says Israeli Attorney General", *Haaretz*, 31 December 2017. Available at www.haaretz.com/israel-news/.premium-new-draft-laws-must-also-consider-settlers-in-west-bank-says-israeli-ag-1.5630121.

23. Excessive use of force against Palestinians by Israeli forces is a concern in the area along the border fence, and often has an impact on children. In mid-February 2018, two Palestinian teenagers aged 14 and 16 were killed and two others were injured by Israeli forces, who fired what were reportedly artillery shells and live fire towards the boys as they approached the fence, although they were reportedly between 30 to 50 metres away when shot.[18] The incident raises concerns about the decision to use lethal force against young, unarmed boys as, according to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, lethal force should be used only if other means are ineffective, and should be used with restraint and in proportion to the seriousness of the offence and the legitimate objective to be achieved. Not only in Gaza, but also in the West Bank, the use of force by Israeli forces has consistently been flagged as an issue of concern by the Special Rapporteur, the High Commissioner for Human Rights and the Secretary-General. That concern is necessarily heightened when children are the victims.

24. In addition to actions that negatively affect the rights to life and to security of person, the conditions in Gaza have an untold effect on economic, social and cultural rights (for a detailed discussion of the right to development in Gaza, see A/71/554, paras. 45–48). Growing up in Gaza means growing up with limited access to health care. Schools and education suffer due to a lack of resources, travel restrictions, electricity cuts and crumbling infrastructure. UNICEF, Save the Children International and the Deputy Special Coordinator for the Middle East Peace Process and United Nations Coordinator for Humanitarian and Development Activities in the Occupied Palestinian Territory issued a joint statement in September 2017 highlighting the fact that Palestinian children continue to struggle to realize their right to education. In Gaza in particular, schools are overcrowded after the significant damage to infrastructure owing to escalations of hostilities, and reconstruction remains difficult given Israel's tight restrictions on the import of materials, in addition to the failing economy of Gaza and budget shortages. Two thirds of the schools in Gaza operate in double shifts, welcoming different groups of students in the morning and in the afternoon, and students who study at night often do so by candlelight as a result of the ongoing electricity crisis.[19] Education in Gaza is heavily dependent upon UNRWA, which operates more than 250 schools in the area. Due to travel restrictions and the near impossibility of obtaining a permit to exit Gaza, teachers, professors and students are unable to travel for needed training, and cannot access educational opportunities abroad.

25. The right to education is enshrined in article 13 of the International Covenant on Economic, Social and Cultural Rights, to which Israel is a party. Despite its position to the contrary, according to the Human Rights Committee and other United Nations treaty bodies, as well as the Advisory Opinion of the International Court of Justice in 2004,[20] Israel's human rights obligations extend to the Occupied Palestinian Territory and apply concurrently to its obligations under international humanitarian law (see A/HRC/34/38, paras. 6–9).

26. The Committee on Economic, Social and Cultural Rights, in its general comment No. 13, noted that education was both a human right in itself and an indispensable means of realizing other rights. The Committee also noted that, with education, marginalized children and adults could gain the tools needed to lift themselves out of poverty and participate fully in their communities. Efforts to stymie that right are in turn efforts to ensure that a population remains trapped in a situation of poverty and desperation. For children growing up under the blockade and closure of Gaza, the importance of access to education is clear. A path by which to learn and grow and seek constructive ways to change their situation is an essential with which they must be provided.

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[18] Defense for Children International–Palestine, "Israeli forces kill two teenagers on Gaza Strip border, 23 February 2018. Available at www.dci-palestine.org/israeli_forces_kill_two_teenagers_on_gaza_strip_border.

[19] Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, "Right of education for 1 million Palestinian children at risk", 11 September 2017. Available at: www.ochaopt.org/content/right-education-1-million-palestinian-children-risk.

[20] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

III. Right to health

27. A 4-year-old girl in Gaza suffering from heart failure dies after Israeli authorities deny her permission to return to East Jerusalem for pediatric cardiology treatment that is unavailable in Gaza.[21] Access to safe and sufficient drinking water in the Occupied Palestinian Territory is severely compromised by the discriminatory access to sources of water in the West Bank, and by the depleted and contaminated water aquifers in Gaza.[22] The principal Palestinian hospital in East Jerusalem is raided repeatedly by heavily armed Israeli soldiers and police who fire stun and sponge grenades, resulting in mayhem and fear among patients and staff.[23] Significant stocks of essential drugs are exhausted in Gaza hospitals and are unable to be replaced, even as emergency services in local hospitals are reduced because of political decisions to cut electricity supplies to the territory.[24] Health workers in the West Bank are frequently impeded in their ability to reach patients and hospitals because of interference by Israeli security forces, including delays at checkpoints and the requirement to transfer patients from Palestinian ambulances to Israeli-registered ambulances before entering East Jerusalem.[25]

28. Those recent examples, among many others, raise serious concerns about the fulfilment of the right to health in the Occupied Palestinian Territory. In recent years, civil society organizations and international agencies have extensively documented the significant and chronic challenges to health care and well-being related to the occupation of the Palestinian territory. Relying upon the World Health Organization's (WHO) definition of health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity"[26] and understanding health within the context of human security and the enlargement of dignity and human choices,[27] this portion of the Special Rapporteur's report examines the impediments to the realization of the right to health in the Occupied Palestinian Territory.

A. Right to health under international law

29. The right to health is one of the most fundamental and widely recognized human rights. The right touches on everything that we do as humans, and its robust promotion is one of the most effective tools available to reduce the scourges of social and economic inequalities, gender disparities, discrimination and poverty. Reflecting the indivisibility and interdependence of all human rights, the right to health is inextricably linked to the realization of other recognized rights, including the rights to water, housing, food, work, education, life and human dignity. As WHO has stated: "Without health, other rights have little meaning."[28]

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[21] Amira Hass, "For some Gazans in need of medical treatment, the wait for an exit permit ends in death", *Haaretz*, 4 December 2017. Available at: www.haaretz.com/middle-east-news/palestinians/.premium-for-some-sick-gazans-the-wait-for-an-exit-permit-ends-in-death-1.5627529.

[22] Amnesty International, "The occupation of water", 30 November 2017. Available at www.amnesty.ca/blog/occupation-water.

[23] B'Tselem, "Israeli security forces endangered patients' lives at al-Makassed hospital, East Jerusalem", 10 August 2017.

[24] World Health Organization (WHO), "WHO special situation report: Occupied Palestinian Territory, Gaza–December 2017 to January 2018", 31 December 2017.

[25] Medical Aid for Palestinians, "Health under occupation", September 2017. Available at www.map.org.uk/downloads/health-under-occupation---map-report-2017.pdf.

[26] Constitution of the World Health Organization. Available at: www.who.int/governance/eb/who_constitution_en.pdf.

[27] Rajaie Batniji and others, "Health as human security in the Occupied Palestinian Territory", *The Lancet*, vol. 373, No. 9669 (March 2009).

[28] See Steven D. Jamar, "The international human right to health", *Southern University Law Review*, vol. 22, No. 1 (August 1994).

30. The right to health is well anchored within international law.[29] Article 25 of the Universal Declaration of Human Rights states that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family." Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights establishes the broad nature of States' obligations to ensure the availability of, access to, and acceptability and quality of health services in its proclamation of "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". In its general comment No. 14, the Committee on Economic, Social and Cultural Rights linked the right to health not only to the availability of quality health-care services but to a wide range of socioeconomic determinants that together promote the conditions by which people can lead a healthy life. The right to health is also expressly found in core international human rights instruments, including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities, as well as in important regional human rights instruments in Europe, the Americas and Africa.

31. The right to health creates a range of specific obligations upon States,[30] including:

(a) The progressive realization of the principle of enjoying the highest attainable standard of physical and mental health;

(b) Ensuring equality of access to health care and health services for all, without discrimination;

(c) The obligations to respect (to refrain from interfering with a right), protect (to prevent third parties from interfering with a right) and fulfil (to take steps to ensure the fullest possible realization of a right) the right to health;

(d) The protection of vulnerable and marginalized groups, including women, children, older persons, persons with disabilities, minorities and indigenous peoples;

(e) The provision and enhancement of the underlying social determinants of health, including food, housing, sanitation, safe water and physical security.

32. For protected peoples living under occupation, their right to health is also guaranteed by international humanitarian law and the laws of occupation. In particular, the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (the Fourth Geneva Convention), together with the Additional Protocols and customary international law, places the overall responsibility for civilian access to health care in an occupied territory upon the occupying Power.[31] Among the extensive responsibilities assumed by the occupying Power for the civilian population are: the protection and respect for the wounded, sick and infirm;[32] the protection of civilian hospitals and their personnel;[33] the assurance that the medical supplies for the population are adequate;[34] the maintenance of the medical and hospital establishment and services, public health and hygiene of the territory;[35] and the facilitation of medical personnel of all categories to fulfil their duties.[36] In addition, the Security Council has stated that all parties to a conflict must ensure that medical and humanitarian staff and health facilities are not attacked.[37]

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[29] John Tobin, *The Right to Health in International Law* (Oxford, Oxford University Press, 2012).

[30] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health.

[31] See generally, Andrew Clapham, Paola Gaeta and Marco Sassòli, eds., *The 1949 Geneva Conventions: A Commentary* (Oxford, Oxford University Press, 2015), especially chaps. 37, 39 and 40.

[32] Fourth Geneva Convention, arts. 15 and 16.

[33] Ibid., arts. 18 and 20.

[34] Ibid., art. 55.

[35] Ibid., art. 56.

[36] Ibid., arts. 23 and 56.

[37] Security Council resolution 2286 (2016).

33. Israel, as the occupying Power, has specific and significant obligations under international law to ensure the health and welfare of the Palestinian population under its control. As a State party to the International Covenant on Economic, Social and Cultural Rights and as an occupying Power, Israel is required to observe international human rights law throughout the Occupied Palestinian Territory.[38] And as a State party to the Geneva Conventions of 1949 and as the occupying Power, Israel is bound under international treaty and customary law to scrupulously apply the Fourth Geneva Convention and the other obligations of international humanitarian law.[39]

B. Situation of health in the Occupied Palestinian Territory

34. The unprecedented length and character of Israel's 50-year acquisitive occupation, driven by the logic of demographic engineering and territorial annexation, both de jure and de facto, has badly fragmented the Palestinian territory.[40] The consequence has been the political separation and geographic isolation of the West Bank, East Jerusalem and Gaza from one another, significantly impinging upon the Palestinians' internal freedom of movement. That fragmentation likewise splinters the delivery of Palestinian health services and deforms the social determinants of health throughout the Occupied Palestinian Territory.[41] Because the Occupied Palestinian Territory lacks any reliable frontier with a neighbouring country, Israel completely controls the Palestinians' external freedom of movement as well.[42]

35. In the West Bank, health care is primarily delivered by the Palestinian Authority and UNRWA, while in Gaza, the governing authority and UNRWA are the principal providers of health services. Palestinian private health providers and Palestinian and international non-governmental organizations also play an important role in health delivery. Nonetheless, the extensive control exercised by the Israeli occupation over the daily lives and movements of the Palestinian population decisively and adversely affects the health services and health outcomes in those areas. In East Jerusalem, where the Israeli health-care system is available to the resident Palestinians, their standard of living and their access to health services is considerably inferior to that enjoyed by Jewish Israeli residents.[43]

1. Gaza

36. As noted above, the health and humanitarian crisis in Gaza has become acute, bordering on a human calamity. Gaza has suffered grievously through three destructive wars in 2008–2009, 2012 and 2014. Israel has imposed a comprehensive blockade on Gaza's land, sea and air frontiers since 2007, which amounts to a form of collective punishment prohibited by international law.[44] The blockade comprehensively controls and

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[38] International human rights law applies to a territory under occupation: see *Legal Consequences of the Construction of a Wall, Advisory Opinion*, paras. 111–113. See also CCPR/C/ISR/CO/4, para. 5.

[39] Security Council resolution 2334 (2016). See also Aeyal Gross, "Litigating the right to strike under occupation: between bureaucracy and humanitarianism", *Minnesota Journal of International Law*, vol. 27 (forthcoming).

[40] The report of the Special Rapporteur of October 2017 (A/72/556) submitted that Israel, as the occupying Power, had reached the status of an illegal occupier because of its violation of the fundamental principles of international law governing a belligerent occupation, including the principles of non-annexation, temporariness, good faith and compliance with international law and the directions of the international community.

[41] Physicians for Human Rights–Israel, "Divide and conquer: inequality in health", January 2015.

[42] The only direct frontier between the Occupied Palestinian Territory and a State other than Israel is the Rafah crossing between Gaza and Egypt. The exit crossing is only open intermittently: in 2015, it was open for 24 days; in 2016, for 38 days; and in 2017, for only 21 days, see WHO, "Health access for referral patients from the Gaza Strip", monthly report, December 2017.

[43] United Nations Conference on Trade and Development, "The Palestinian economy in East Jerusalem: enduring annexation, isolation and disintegration", document UNCTAD/GDS/APP/2012/1.

[44] See A/HRC/34/36, para. 36, with references. Collective punishment is expressly prohibited by article 33 of the Fourth Geneva Convention as well as by customary international law. See Shane Darcy,

restricts the movement of people and goods in and out of Gaza, resulting in economic suffocation, faltering reconstruction efforts, social and familial isolation from the outside world and a dire impact upon the territory's already anaemic living and health standards. The 12-year-old political schism between the Palestinian Authority and the authority governing Gaza has further compounded this misery. Given the critical state of health care in Gaza, the Special Rapporteur is devoting an outsized portion of the present report to the topic.

37. The 2 million people living in Gaza rely upon a health-care system that United Nations health officials have said is on the edge of collapse.[45] According to WHO, an estimated 206 (40 per cent) of the 516 listed essential medicines in its basic health basket were completely out of stock by the end of January 2018, and another 43 per cent of essential drugs had less than a month's supply remaining.[46] That included drugs required for treating cancer and autoimmune diseases and for performing dialysis and conducting cardiac angiographies.[47] The Office for the Coordination of Humanitarian Affairs of the Secretariat has noted that the funding, purchase and delivery of medicines is the responsibility of the Palestinian Authority and has observed a decline in the supply of essential drugs associated with internal Palestinian divisions, though it did note a slight improvement by the start of 2018.[48] Nonetheless, shortages of vital laboratory supplies has meant that hematology, culture and blood chemistry services can no longer be conducted at out-patient clinics, but only for patients who are hospitalized.[49] In addition, serious shortages of essential medical disposables such as syringes, line tubes, filters for dialysis and dressing materials have also been reported.[50]

38. The crippling electricity shortages in Gaza have forced many hospitals to shut down areas such as operating theatres, emergency departments and general medical wards, and ration essential services such as diagnostic services, instrument sterilization and the treatment of chronic illnesses.[51] At the beginning of 2018, 3 hospitals and 13 primary health-care clinics were temporarily closed, affecting health-care delivery to more than 300,000 people.[52] Neonatal intensive care units have become overcrowded in the face of maternal malnutrition and rising rates of premature and low-weight babies.[53] For the hospitals that remain open, bed occupancy rates are reported to be above 90 per cent. By December 2017, the waiting time for elective surgery stood at 52 weeks, well beyond the operative threshold of 24 weeks.[54] Compounding the problem of treatment services has been the inability of Gaza hospitals to obtain permission from Israel to import replacement parts for vital diagnostic imaging equipment, putting the equipment out of service for months and even years.[55] Serious funding shortages have affected the ability of hospitals to purchase fuel to power, maintain and repair their electrical generators during the endemic electricity cuts.

39. The dilapidated and failing Gaza health-care sector is overwhelmingly a human-made crisis. Notwithstanding the best efforts of the medical and health staff working in the

"The prohibition of collective punishment", in Clapham, Gaeta and Sassòli, eds., *The 1949 Geneva Conventions*.

[45] Amira Hass, "Gaza health system collapsing: 40 per cent of medicine runs out", *Haaretz*, 8 February 2018.

[46] WHO, "WHO special situation report".

[47] Physicians for Human Rights–Israel, "Overview of the Gaza health system: despite the reconciliation the situation keeps deteriorating", January 2018.

[48] Office for the Coordination of Humanitarian Affairs, "Only marginal improvement in humanitarian situation in the Gaza Strip in wake of the intra-Palestinian reconciliation agreement", "Humanitarian bulletin: Occupied Palestinian Territory", January 2018. Available at www.ochaopt.org/content/only-marginal-improvement-humanitarian-situation-gaza-strip-wake-intra-palestinian.

[49] Physicians for Human Rights–Israel, "Overview of the Gaza health system".

[50] Ibid.

[51] WHO, "WHO special situation report".

[52] Ibid.

[53] Ratcliffe, "Gaza's health system close to collapse as electricity crisis threatens total blackout".

[54] WHO, "WHO special situation report".

[55] Physicians for Human Rights–Israel, "Overview of the Gaza health system".

territory, they have been unable to service Gaza's residents at anywhere near the health system's potential. One consequence of the acute crisis has been the compelling need to refer larger numbers of patients with serious or chronic health conditions to medical facilities outside Gaza for treatment that they should be able to, but cannot, receive in the territory. At that stage, another significant impediment to the fulfilment of the right to health in Gaza is encountered.

40. Israel administers a byzantine and opaque exit permit system imposed upon those patients who require specialized treatment in East Jerusalem (the location of the most advanced medical facilities within the Occupied Palestinian Territory), the rest of the West Bank or abroad.[56] Patients with complex disorders who are unable to be adequately treated in Gaza include: cancer patients requiring surgery, chemotherapy and/or radiotherapy; pediatric patients with metabolic disorders or congenital defects; heart patients requiring open-heart surgery or with post-operative complications; eye patients in need of specialized surgery or cornea transplants; bone-disease patients requiring hip or knee surgery; neurosurgical patients; patients requiring MRI scans; and patients with blood diseases.[57] For virtually all of those patients, time is of the essence, either because of the deteriorating nature of their serious or life-threatening disorders, or because life is at an absolute standstill as long as their chronic and debilitating health conditions remain unresolved.

41. Beyond the question of urgency, the non-governmental organization Physicians for Human Rights–Israel has criticized the Israeli authority's criteria for exit permit applications, which distinguishes between applications on the basis of whether the applicants require life-saving or disability-preventing medical treatments or whether their medical needs are less urgent, stating that this distinction is "at odds with the rules of medical ethics, according to which every patient must be allowed access to the best possible treatment available to him/her, regardless of its urgency or the severity of his/her medical condition".[58]

42. A patient with a complex disorder is first assessed by medical professionals in Gaza as to whether her or his condition can be adequately treated by the resources available within the local health system.[59] If the assessment determines that care must be sought outside of Gaza, the Palestinian Ministry of Health has the responsibility to approve the referral request. The patient's application is then forwarded to the Israeli authorities for permission for the patient and his or her travelling companion to exit the territory through the Erez crossing and travel to a hospital outside Gaza.

43. An application comes with no guarantee of success, and approval rates for travel outside Gaza have been steadily declining. Since WHO began collecting statistics for medical permit approvals in 2008, 2017 has marked the lowest annual approval rate. In 2012, the approval rate was 92 per cent; it declined to 82 per cent in 2014; and declined further to 62 per cent in 2016. According to WHO, the approval rate by Israeli authorities for the 25,812 health travel permit applications filed in Gaza in 2017 had tumbled to 52.4 per cent. While only 2.6 per cent of the applications were formally rejected by Israeli authorities (invariably with no clear reasons provided) in 2017, a large number — 45 per cent — were delayed, and no response was provided.[60] An estimated 11,000 medical

[56] Anita Vitullo and others, "Barriers to the access to health services in the Occupied Palestinian Territory: a cohort study", *The Lancet*, vol. 380, Nos. S18–S19 (October 2012).

[57] Al Mezan Center for Human Rights, "Medical care under siege: Israel's systematic violation of Gaza's patient rights", February 2018.

[58] Physicians for Human Rights–Israel, "Denied 2: harassment of Palestinian patients applying for exit permits", August 2016.

[59] Al Mezan Center for Human Rights, "Medical care under siege"; WHO, "Timeline for Gaza patient referrals", available at https://unispal.un.org/DPA/DPR/unispal.nsf/0/604F89F84BAAA88085258169004FA797.

[60] WHO, "WHO special situation report"; Al Mezan Center for Human Rights, "Medical care under siege".

appointments were missed in 2017 by patients from Gaza whose travel permit applications were either denied or delayed.[61]

44. WHO has documented that 54 patients who had applied for a medical travel permit and who had either been denied permission or who had not received an answer to their application died in Gaza in 2017.[62] Three of those deaths are illustrative of that broader tragedy.[63]

45. Abeer Abu-Jayyad, 46, suffered from breast cancer, and required a treatment course of Herceptin. The drug was unavailable in Gaza, and she had applied for a health travel permit for treatment at Augusta Victoria Hospital in East Jerusalem. Her travel applications were denied on security grounds by the Israeli authorities, and she missed her scheduled appointments. Abeer died in Gaza on 8 June 2017 after the cancer metastasized. Abeer's case exemplifies a distressing trend: 46 of the 54 deaths in 2017 were cancer patients who were unable to receive adequate health treatment in Gaza. Ahmed Hasan Shbeir, 17, was born with a congenital heart defect. Because of the limited capacity to treat his condition in Gaza, Ahmed travelled regularly to hospitals in East Jerusalem and Israel for specialized treatment. However, beginning in September 2016, applications for a health travel permit filed by Ahmed's family were first not answered, and then formally refused, by Israeli authorities. His condition deteriorated, and he subsequently died in Gaza on 14 January 2017. Aya Khalil Abu Mutlaq, 5, was born with cerebral palsy and was initially treated in Gaza. In early February 2017, after obtaining a medical referral from the Palestinian Ministry of Health, Aya's family sought a medical travel permit from the Israeli authorities so that she could receive treatment at Al Makassed Hospital in East Jerusalem. She secured, but missed, three appointments at Al Makassed after her family received no responses to their repeated applications. While waiting for an answer to the third permit request, Aya died on 17 April 2017. It is not known whether any of the 54 patients would have either recovered or stabilized had permission to travel been granted, but the chances of their health improving were negligible without the opportunity to obtain the care they required outside Gaza.

46. The difficulties faced by cancer patients in Gaza in the face of the blockade has been recently reviewed by Physicians for Human Rights–Israel and by the Al Mezan Center for Human Rights.[64] In Gaza, only some chemotherapy treatments and auxiliary drugs are available. Operations to remove tumours are difficult in the face of electricity and fuel shortages. Radiation therapy and medical diagnostics requiring radioisotopes are non-existent because of the lack or non-functioning of necessary instruments such as linear accelerators or PET-CT scanners, and the prohibition on the import of medical radioisotopes into Gaza. Cancer diagnosis in Gaza is frequently made at the end stage of the disease, and cancer patients report a low quality of life, reflecting the lack of adequate resources for detection and treatment.[65] Cancer patients are regularly referred for treatment outside Gaza, but a growing number are denied exit permits or face delays in receiving their exit permits from the Israeli authorities.

47. Physicians for Human Rights–Israel has observed that the Israeli authority which grants travel permission, the Coordinator of Government Activities in the Territories, has increasingly exceeded its own time limits for providing responses to health travel applications, sometimes by months. Referring specifically to the plight of female cancer patients from Gaza, the organization has stated that the decision-making delays by the Coordinator amount to "a policy of disparaging the suffering of those patients and shirking Israel's responsibility for the consequences of the restrictions it deliberately imposes".[66]

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[61] Human Rights Watch, "Israel: record-low in Gaza medical permits", 13 February 2018.

[62] WHO, "WHO special situation report".

[63] These profiles were collected by Al Mezan Center for Human Rights, see "Medical care under siege".

[64] Physicians for Human Rights–Israel, "Overview of the Gaza health system"; Al Mezan Center for Human Rights, "Medical care under siege".

[65] Ahmed Nimer Shamallakh and Asma M. Imam, "Quality of life in patients with cancer in the Gaza Strip: a cross-sectional study", *The Lancet*, vol. 390, No. S21 (August 2017).

[66] Physicians for Human Rights–Israel, "Rapid response to applications by women cancer patients from Gaza" (November 2017). Available at www.phr.org.il/wp-content/uploads/2017/11/cogat-letter.pdf.

Physicians for Human Rights–Israel has reported that a large number of exiting patients, many of whom are cancer patients, have been closely interrogated for intelligence information, which the organization deems to be unethical and immoral.[67]

48. Medical professionals and health delivery staff in Gaza, already underpaid, have been receiving only half to a quarter of their salaries, and in some cases no salary at all, in recent months.[68] Staff strikes protesting the salary suspensions have further impaired the delivery of health care.[69] The severe restrictions in movement imposed by the Israeli blockade have meant that doctors and nurses in Gaza face significant hurdles in receiving permission from the Coordinator to leave the territory to receive specialized professional training elsewhere in the Occupied Palestinian Territory or abroad: only 40 per cent of exit applications by health professionals were approved in 2017.[70] During the 2014 war, 23 health professionals in Gaza were killed and another 78 were injured. An estimated 45 ambulances were damaged or destroyed and 73 hospitals and clinics were struck.[71]

49. Geographically, Gaza and Israel are cheek by jowl with each other. Gaza City is only 75 kilometres from Tel Aviv. However, there is an extraordinary gap in health outcomes between Gaza and Israel, according to some common international measuring sticks. The following statistics are provided by WHO:

- Life expectancy: 73.1 (Gaza) versus 82.1 (Israel)
- Infant mortality rate: 20 per 1,000 live births (Gaza) versus 3 (Israel)
- Maternal mortality rate: 31 per 100,000 births (Gaza) versus 2 (Israel)
- Breast cancer 5-year survival: 65 per cent (Gaza) versus 86 per cent (Israel)

50. The right to health is thus severely restricted for the residents of Gaza. Despite the fact that this is occurring in full view of the international community, the Palestinian authorities, and the Government of Israel, little has been done to alleviate the suffering of Gaza's people. The reconciliation agreement between Hamas in Gaza and Fatah in the West Bank signed in 2017 has all but ground to a halt.[72] Israel's obligations, as occupying Power, to the residents of Gaza remain far from fulfilled, and the international community takes note of the dire situation of Gaza's residents, yet fails to act.

2. Mental health

51. Recent health studies in the Occupied Palestinian Territory have found that the cumulative threats to human security for its residents have had a significant and adverse impact upon psychological well-being among the population.[73] The cumulative threats include traumatic and anxiety-inducing experiences of warfare, home demolitions, imprisonment and beatings, land confiscation and violence arising from demonstrations and settler attacks, as well as the diminished character of life caused by the lack of freedom of movement, food insecurity, the lack of control over water resources, discrimination and

[67] Physicians for Human Rights–Israel, "Denied 2"; Women's Centre for Legal Aid and Counselling, Communication with Special Rapporteur (February 2018).

[68] Office for the Coordination of Humanitarian Affairs, "Only marginal improvement in humanitarian situation in the Gaza Strip in wake of the intra-Palestinian reconciliation agreement".

[69] Physicians for Human Rights–Israel, "Denied 2".

[70] WHO, "WHO special situation report".

[71] Medical Aid for Palestinians, "Health under occupation".

[72] Nickolay Mladenov, Special Coordinator for the Middle East Peace Process, "Briefing to the Security Council on the situation in the Middle East", 25 January 2018. Available at https://reliefweb.int/report/occupied-palestinian-territory/nickolay-mladenov-special-coordinator-middle-east-peace-6.

[73] WHO, "Health conditions in the Occupied Palestinian Territory, including East Jerusalem and in the occupied Syrian Golan", document A69/44, para. 15: "An increase in the burden of mental and psychosocial disorders can be expected in a population experiencing prolonged occupation, lack of personal security, severe restrictions on movement and violations of human rights, including displacement in a post-conflict situation". Available at http://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_44-en.pdf.

statelessness, precarious work and the tottering economy and the mounting poverty rates, all of which serve to erode the social fabric of society in the Occupied Palestinian Territory.[74] Above all, Palestinians lack any collective control over the occupying authority that not only makes virtually all of the decisive political, economic and social decisions which govern their lives, but makes them in a fashion that thwarts their interests and disregards their well-being.

52. According to a 2013 regional study on mental health, the Occupied Palestinian Territory bore the largest burden of mental disorders among the examined countries in the Eastern Mediterranean region.[75] Mental health professionals in the Occupied Palestinian Territory have encountered a steady increase in visits to mental health clinics over the past several years, a rise in personality disorders and an increase in impulsive behaviours among the population.[76] A third of patients attending primary health clinics in the West Bank and Gaza were reported to be suffering from mental health issues, a rate that is higher than more politically stable countries.[77]

53. A recent WHO report has stated that mental health workers in the Occupied Palestinian Territory have found that the most common mental health issues are affective disorders, anxiety, depression, epilepsy, aggression, insomnia, neurosis, schizophrenia, total exhaustion, drug-induced conditions and post-traumatic stress disorder (PTSD).[78] Another health study estimated that the expected population prevalence of post-conflict PTSD and major depression would be close to 30 per cent among Palestinians in the West Bank and Gaza.[79] A noteworthy recent study found that residents of two Palestinian refugee camps in the West Bank reported very high levels of profound psychological distress linked to regular raids by Israeli security forces and their frequent use of tear gas in close quarters against the residents.[80]

54. One significant feature is the relative lack of psychiatric, psychological and counselling services available. The West Bank, with 2.6 million Palestinians, has only one mental hospital, in Bethlehem, with 180 beds. Gaza, with 2 million people, has only a 40-bed hospital. There is only one psychiatric training programme in the Occupied Palestinian Territory and, as of May 2016, there was only 1 psychiatrist, along with approximately 30 psychologists.[81] A national mental health strategy has been developed by the Palestinian Ministry of Health, and among its goals are the enhancement of resources for the treatment of mental health, improvements in the measurement of mental illness and an increased

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[74] Clea McNeely and others, "Human insecurity, chronic economic constraints and health in the Occupied Palestinian Territory", *Global Public Health*, vol. 9, No. 5 (2014); Stevan E. Hobfoll and others, "The limits of resilience: distress following chronic violence among Palestinians", *Social Science and Medicine*, vol. 72, No. 8 (April 2011); Batniji and others, "Health as human security in the Occupied Palestinian Territory".

[75] Raghid Charara and others, "The burden of mental disorders in the Eastern Mediterranean region, 1990-2013", *PLoS One*, vol. 12, No. 1 (January 2017). The authors expressed caution about the full reliability of measurements on mental health in the Occupied Palestinian Territory, given the difficulties in data collection.

[76] WHO, "Health conditions in the Occupied Palestinian Territory, including East Jerusalem and in the occupied Syrian Golan", document A70/39. Available at http://apps.who.int/gb/ebwha/pdf_files/WHA70/A70_39-en.pdf.

[77] Ambrogio Manenti and others, "Report of a field assessment of health conditions in the Occupied Palestinian Territory", February 2016. Available at http://apps.who.int/gb/Statements/Report_Palestinian_territory/Report_Palestinian_territory-en.pdf.

[78] Ibid.

[79] Daphna Canetti and others, "Improving mental health is key to reduce violence in Israeli and Gaza", *The Lancet*, vol. 384, No. 9942 (August 2014). This study also noted that the promotion of the mental health of both Palestinians and Israelis is essential to laying the groundwork for peace.

[80] Rohini Haar and Jess Ghannam, "No safe space: health consequences of tear gas exposure among Palestinian refugees, January 2018", Human Rights Center, University of California Berkeley School of Law. Available at www.law.berkeley.edu/wp-content/uploads/2017/12/NoSafeSpace_full_report22Dec2017.pdf.

[81] WHO, "Health conditions in the Occupied Palestinian Territory, including East Jerusalem and in the occupied Syrian Golan", document A69/INF.6. Available at http://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_INF6-en.pdf.

focus on public education to challenge the social stigmatization related to mental health issues.[82]

3. Children

55. The health and social well-being of children are an apt barometer of the larger well-being of a society. Recent studies have reported that food insecurity in the Occupied Palestinian Territory has resulted in worrisome levels of child malnutrition. A 2013 study found disturbing levels of anaemia (26.5 per cent across the Occupied Palestinian Territory, and 30.8 per cent in Gaza), vitamin A deficiency (73 per cent across the Occupied Palestinian Territory) and vitamin D deficiency (60.1 per cent across the Occupied Palestinian Territory, and 64.4 per cent in Gaza) among children aged 6 months to 5 years. Those micronutrient deficiencies are strongly linked to poverty and poor nutrition. The study also found troubling levels of childhood stunting in the same age cohort: 10.3 per cent across the Occupied Palestinian Territory, and 11 per cent in Gaza. Stunting among young children is a consequence of chronic malnutrition, is irreversible and has adverse lifelong effects.[83]

56. A more recent study, conducted in 2014 and 2015, focused on levels of malnutrition among children and their mothers in the Jordan Valley. The study found that 16 per cent of children under 5 years of age surveyed were stunted. Half of all children surveyed (49.3 per cent) were anaemic. The study also observed that 87 per cent of the land in the Jordan Valley is under full Israeli military or settler jurisdiction, and Palestinian use of those lands is prohibited; it noted that the structural barriers associated with the occupation significantly affect the overall health status of the surveyed population.[84] While those levels of childhood stunting are highly concerning and are far too prevalent, other studies have indicated that there has been a general decline in the rates of wasting, stunting and underweight.[85] A recent study on water supplies and childhood development has drawn robust links between inadequate access to quality water, poverty and physical underdevelopment among Palestinian children living in 52 communities in the Occupied Palestinian Territory.[86]

57. Recent medical literature has focused on the mental well-being of children in the Occupied Palestinian Territory. A 2007 study that examined 3,415 adolescents living in the Ramallah District of the West Bank found a strong correlation between the humiliation induced by conflict conditions and a high number of subjective health complaints.[87] Chronic exposure to humiliation (defined as the subjective experiences felt by an individual who has been unjustly treated and debased) among Palestinians in the West Bank has been linked to higher levels of insecurity and depression, feelings of diminished personal freedom, poor health, higher levels of stress and feelings of being broken or destroyed.[88] The aftermath of intense warfare fought among dense civilian neighbourhoods has resulted

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[82] State of Palestine, Ministry of Health, "National mental health strategy: Palestine, 2015–2019", June 2015. Available at www.mindbank.info/item/6103.

[83] State of Palestine, Ministry of Health, UNICEF and University of Vienna, "Palestine Micronutrient Survey", 2013.

[84] Palestinian National Institute of Public Health, "Prevalence and detriments of malnutrition and intestinal infections among children and their mothers in the Jordan Valley", 2016. Available at http://pniph.org/site/article/16.

[85] Manenti and others, "Report of a field assessment of health conditions in the Occupied Palestinian Territory".

[86] Ghassan N. Shakhshir, "Association between water supply and early childhood development in Palestine: a descriptive analysis of demographic and health survey data", *The Lancet*, vol. 390, No. S25 (August 2017).

[87] Rita Giacaman and others, "Humiliation: the invisible trauma of war for Palestinian youth", *Public Health*, vol. 121, No. 8 (August 2007).

[88] Brian K. Barber and others, "Effect of chronic exposure to humiliation on well-being in the Occupied Palestinian Territory: an event-history analysis", *The Lancet*, vol. 382, No. S7 (December 2017).

in a high rate of PTSD among children in Gaza,[89] with one study estimating that the prevalence of PTSD among children in Gaza even before the destructive wars of the past decade ranged from 23 to 70 per cent.[90] After the 2012 war in Gaza, a study found exceptionally high numbers of children (aged 11 to 17) had experienced personal trauma (88 per cent), and had witnessed trauma experienced by others (84 per cent), all of which raised the potential for depression and PTSD.[91] In a related study, Palestinian mothers in the West Bank have reported that they feel a sense of helplessness, grief and strain on their mental well-being in the face of the anxiety and stress experienced by their children in an atmosphere of political violence, economic insecurity and frequent threats to their personal safety.[92]

4. Persons with disabilities

58. Persons with disabilities in the Occupied Palestinian Territory include those who acquired their disability at birth or in childhood, through life activities or during war and conflict. A 2011 survey estimated that approximately 7 per cent of the population in the Occupied Palestinian Territory has a disability, as measured by the international definition of impairment and disability.[93]

59. One particular feature of the challenges of living with a disability in Palestine is the plight of those amputees in Gaza who lost a limb during the 2014 war. The war resulted in approximately 100 new amputees, adding to the 300 amputees in Gaza already wounded by conflict between 2009 and June 2014, according to one study.[94] The same study observed the diminished ability of the Gaza health-care system to provide quality care for the new amputees, including: (a) the lack of surgeons to adequately conduct proper limb amputations; (b) the lack of resources to provide quality prostheses for the amputees; (c) the destruction of the Al-Wafa rehabilitation hospital by Israeli munitions during the war and the subsequent diminishment of rehabilitation services; (d) the serious shortfall in rehabilitation beds; (e) the inadequate and insecure funding for rehabilitation services; and (f) the challenges in obtaining a health exit permit from the Israeli authorities to seek rehabilitation services outside Gaza.

60. In addition, amputees and others who rely upon wheelchairs or crutches for mobility face the challenges of navigating the ruined and crumbling infrastructure of Gaza. Those issues are further compounded by the recent worsening of the electricity crisis. As much of Gaza is densely populated, and has buildings with multiple floors, people with disabilities often rely on the use of elevators. Since electricity operates only a few hours a day in some cases, simply leaving one's home can be nearly impossible. Electricity is similarly essential for those who depend on motorized wheelchairs. The ability to participate in public life is seriously affected for those individuals.

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[89] A. Thabet, Omar El-Buhaisi and Panos Vostanis, "Trauma, PTSD, anxiety and coping strategies among Palestinian adolescents exposed to war on Gaza", *The Arab Journal of Psychiatry*, vol. 25, No. 1 (2014).

[90] A. Thabet and others, "Exposure to war trauma and PTSD among parents and children in the Gaza strip", *European Child and Adolescent Psychiatry*, vol. 17, No. 4 (2008).

[91] Basel El-Khodary and Muthanna Samara, "The effect of exposure to war-traumatic events, stressful life events, and other variables on mental health of Palestinian children and adolescents in the 2012 Gaza war", *The Lancet*, vol. 391, No. S6 (February 2018).

[92] Cindy Sousa and Mona El-Zuhairi, "Mothering within the context of political violence: an exploratory qualitative study of mental health risks and resilience", *The Lancet*, vol. 390, No. S36 (August 2017).

[93] Palestinian Central Bureau of Statistics, "Press conference report: disability survey, 2011", June 2011.

[94] Physicians for Human Rights–Israel, "Amputees: the challenges faced by Gaza-strip amputees in seeking medical treatment", May 2016.

5. Palestinian prisoners in Israeli detention

61. As of November 2017, nearly 6,000 Palestinians were being held in Israeli prisons for security-related offences, including 425 prisoners held under administrative detention.[95] The Special Rapporteur has previously expressed concern about Israel's use of administrative detention in contravention of international legal obligations, as well as the arrest and detention of children (see A/71/554, paras. 18–24).

62. Credible reports of ill-treatment and torture of Palestinian detainees have been made in recent years, including incidents in which detainees have been subjected to sleep deprivation, stress positions and physical beatings (see A/HRC/34/38, para. 49). A 2012 health study of a small cohort of prisoners released after long-term incarceration found that all of them had developed significant physical and psychological issues arising from their imprisonment. The former prisoners described overcrowding, poor nutrition, humidity, pest infestation, the denial of family visits and a general lack of hygiene at the prisons.[96] A 2016 study, which interviewed a large cohort of released prisoners, reported that they suffered long-term effects to their mental health, with depression, anxiety and psychological distress as the most commonly reported disorders.[97]

IV. Conclusions

63. An occupying Power has the duty, under international law, to ensure that the right to health — the enjoyment by the protected population of the highest attainable standard of physical and mental health — is fulfilled during the temporary period of occupation, consistent with its reasonable security needs. While fully respecting its legal obligation not to act covetously towards the territory and resources of the occupied territory, it would actively work to restore and enhance the health-care system for the people under its effective control. It would not obstruct access by patients and medical staff to hospitals and health clinics, either physically or bureaucratically. It would strive to create conditions of stability and security, so that the social determinants of health can advance, rather than retard, the flourishing of physical and mental well-being. It would promote equality of access to health care for all, with particular attention paid to the vulnerable and marginalized. The occupying Power would actively work with the health institutions of the protected population to chart a progressive health-care strategy for the future that also respected the coming restoration of full sovereignty. It would not discriminate. It would not torture or mistreat prisoners and detainees. It would not impose collective punishments of any sort. As a priority, it would provide all the necessary health services and supplies that the medical institutions of the protected population were unable to deliver themselves. Ultimately, the occupying Power would understand that leaving behind a thriving health-care system, aligned with robust social determinants, at the end of the occupation provides the best opportunity for peace and prosperity to endure.

64. Measured against those obligations, Israel has been in profound breach of the right to health with respect to the Occupied Palestinian Territory. Its avaricious occupation — measured by the expanding settlement enterprise, the annexation of territory, the confiscation of private and public lands, the pillaging of resources, the publicly stated ambitions for permanent control over all or part of the Territory and the fragmentation of the lands left for the Palestinians — has had a highly disruptive impact upon health care and the broader social determinants for health for the Palestinians. While the Palestinian Authority (which governs in parts of the West Bank) and the authority in Gaza have some agency over the state of health care in the Occupied Palestinian Territory, Israel's conduct of the occupation bears the ultimate responsibility. At the heart of this chasm between the

[95] B'Tselem, Statistics on Palestinians in the custody of the Israeli security forces. Available at www.btselem.org/statistics/detainees_and_prisoners.

[96] Randa May Wahbe, "Physical and mental health of long-term Palestinian political prisoners: a qualitative study", *The Lancet*, vol. 380, No. S23 (October 2012).

[97] Manenti and others, "Report of a field assessment of health conditions in the Occupied Palestinian Territory".

right to health and the harrowing conditions on the ground is what Dr. Paul Farmer has called the "pathologies of power": the enormous gap in situations of structured inequality between those who control the power to decide and those without power who must bear the consequences of these rapacious decisions, until some combination of a vision for justice, an organized opposition and the display of an international conscience can bring these disparate relationships to an end.[98] Palestinian, Israeli and international human rights organizations have persuasively demonstrated both the inequities in the health and social conditions in the Occupied Palestinian Territory and their substantive relationship to Israel's occupation. That leaves to the rest of us the obligation to act decisively and effectively.

V. Recommendations

65. The Special Rapporteur recommends that the Government of Israel comply with international law and bring a complete end to its 50 years of occupation of the Palestinian territories occupied since 1967. The Special Rapporteur further recommends that the Government of Israel take the following immediate measures:

(a) Comply fully with Security Council resolution 2334 (2016) concerning the settlements;

(b) Ensure that Palestinian children are treated in accordance with the standards set forth in the Convention on the Rights of the Child, in particular with respect to arrest and detention;

(c) End the blockade of Gaza, lift all restrictions on imports and exports and facilitate the rebuilding of its housing and infrastructure, with due consideration given to justifiable security considerations.

66. With respect to the right to health, the Special Rapporteur recommends that the Government of Israel immediately take the following measures:

(a) Ensure regular and reliable access, at all times, for all Palestinian patients who require specialized health care outside of their jurisdictions, consistent with genuine Israeli security concerns;

(b) End the conditions which obstruct the free passage of Palestinian ambulances to access and transport patients to health-care facilities in an expeditious fashion;

(c) Ensure the respect and protection of medical personnel and medical facilities as required by international humanitarian law;

(d) Substantially improve prison conditions and the provision of adequate health care for Palestinian prisoners and detainees;

(e) Remove the unnecessary barriers that prevent Palestinian health-care staff from acquiring professional training and specialization elsewhere in the Occupied Palestinian Territory and abroad, and allow them to receive training at their home institutions from international health professionals;

(f) Ensure that no one is subjected to torture or degrading treatment;

(g) Take meaningful steps to improve the many social determinants that influence health outcomes in the Occupied Palestinian Territory;

(h) Comply fully with its obligations under international human rights and humanitarian law with respect to fulfilling the health needs of the protected population.

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[98] Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor* (University of California Press, 2004).